

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Thomas Raymond Firriolo,)	Case No. 6:18-cv-00096-DCC
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Brad Rice, Robert Patrick Color,)	
Michael Pitts, Kennieth Miller,)	
Officer Johnathan Bragg, Officer)	
Andrew Hansen, Christopher Pustiz,)	
John Castil, Trane, Mathew Pritchard,)	
David Crotts,)	
)	
Defendants.)	
_____)	

This matter is before the Court on Plaintiff's Complaint, Motion for Collateral Review of the Report and Recommendation, and Motion to Transfer Case. ECF Nos. 1, 17, 18. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial proceedings and a Report and Recommendation ("Report"). On February 2, 2018, the Magistrate Judge issued a Report recommending that Complaint be dismissed without prejudice and without issuance of service of process. ECF No. 10. Plaintiff filed objections to the Report. ECF No. 13.

LEGAL STANDARD

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final

determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

ANALYSIS

The Report recommends that the Complaint be dismissed because this Court does not have subject matter jurisdiction over this action either through diversity or as a result of a federal question. While Plaintiff raises several objections to the Report both in his objections and in various letters filed after the Report, there is no indication that this Court has jurisdiction over his claims. See ECF Nos. 13, 19, 22. Plaintiff objects to the Magistrate’s conclusion that there is no diversity jurisdiction; however, as explained in the Report, it appears that Plaintiff and at least one of the Defendants are residents of South Carolina. He also objects to the Report’s conclusion that Plaintiff has failed to state a plausible claim pursuant to 42 U.S.C. § 1983. Plaintiff identifies Defendants Andrew Hanson and Christopher Putsiz as police officers and states that Kennieth Miller is the Chief of Police, presumably in an attempt to demonstrate state action as required under

§ 1983. However, the only allegation Plaintiff makes against them is that they did not allow Internal Affairs to investigate a false police report made by Plaintiff's neighbors, which does not raise a question of constitutional concern. See *West v. Atkins*, 487 U.S. 42, 48 (1988) (holding that to state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law). Accordingly, for the reasons listed above and the reasons provided in the Report, this Court lacks subject matter jurisdiction over Plaintiff's claims.

CONCLUSION

Accordingly, the Court adopts the Report and Recommendation of the Magistrate Judge and overrules Plaintiff's objections. Plaintiff's Complaint is **DISMISSED** without prejudice and without issuance of service of process. Plaintiff's Motions for Collateral Review of the Report and Recommendation [18] and to Transfer Case [17] are denied as **MOOT**.

IT IS SO ORDERED.

s/Donald C. Coggins, Jr.
United States District Judge

October 15, 2018
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.